[JOINT COMMITTEE PRINT]

SUMMARY OF MISCELLANEOUS TAX BILLS PASSED BY THE CONGRESS IN THE POST-ELECTION SESSION

PREPARED FOR THE USE OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

AND THE

COMMITTEE ON FINANCE

U.S. SENATE

BY THE STAFF OF THE

JOINT COMMITTEE ON TAXATION

DECEMBER 23, 1980

U.S. GOVERNMENT PRINTING OFFICE

70-489 O WASHINGTON : 1980 JCS-47-80

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I. INTRODUCTION

This pamphlet provides a summary of the provisions of nine miscellaneous tax bills passed recently by the Congress. One bill, H.R. 6975 (The Tax Treatment Extension Act), was passed on December 1, 1980 (and signed by the President on December 17, 1980—P.L. 96–541); a second bill, H.R. 3317, was passed on December 12, 1980; and the other seven bills, H.R. 4155, H.R. 4968, H.R. 5391, H.R. 5505, H.R. 5973, H.R. 7171, and H.R. 7956, were passed on December 13, 1980.

The summaries of the bills are arranged in bill numerical order. This pamphlet is intended to provide a convenient summary of these tax bills for the House Committee on Ways and Means, the Senate Committee on Finance, and other Members of Congress. The official legislative histories for these bills are found in the respective House and Senate committee reports and in the *Congressional Record* of House and Senate floor consideration.

II. SUMMARY OF MISCELLANEOUS TAX BILLS

A. SUMMARY OF H.R. 3317

(As passed by the Congress, December 12, 1980)

1. Refunds of Tread Rubber Excise Tax

Under present law, a 5-cents-per-pound manufacturers excise tax is imposed on tread rubber used for recapping or retreading tires of the type used on highway vehicles. No credit or refund of the tread rubber tax is available if the tax-paid tread rubber is wasted in the recapping process, contained in a recapped tire the price of which is adjusted under a warranty, or sold in conjunction with certain otherwise tax-exempt sales. In some situations, the tread rubber tax can be avoided by exporting a tire to be recapped outside the United States and then importing the retreaded tire.

This provision allows a refund or credit of the manufacturers excise tax on tread rubber where the rubber is (1) wasted in the recapping process, (2) contained in a recapped tire the price of which is adjusted under a warranty, or (3) sold in conjunction with certain otherwise tax-exempt sales.

The provision also imposes the tread rubber excise tax on the tread rubber in tires which are exported for recapping and subsequently imported into the United States.

2. Replacement Period for Nonrecognition of Gain on Sale of Residence

In general, gain on the sale of a taxpayer's principal residence will not be recognized for income tax purposes if a replacement residence is purchased or constructed and certain requirements are met within specified time periods.

This provision, under limited circumstances, requires the Secretary of the Treasury to extend to five years the present two-year period during which a taxpayer must occupy and use as a principal residence a newly constructed replacement residence. The provision is intended to benefit Mrs. Jane M. Cathcart of Virginia.

3. Disclosure of Tax Returns to State Audit Agencies

Present law authorizes the disclosure of returns and return information to State agencies which are charged under the laws of the State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws.

This provision of the bill permits State taxing authorities to disclose Federal tax return information in their possession to State auditing agencies for the purpose of auditing the activities of the State taxing authority.

4. Permit SSI Payments to Residents of Bonner's Ferry Restorium, Bonner's Ferry, Idaho

This provision allows residents of Bonner's Ferry Restorium, Bonner's Ferry, Idaho, to receive SSI payments in the same manner as residents of a nonpublic institution.

5. Clarification of Limitation on Deductibility of Certain Entertainment Facility Expenses Includible in Income of Recipient

Under this provision, the general rule for the disallowance of deductions for entertainment, amusement, or recreation expenses (Code sec. 274(a)) does not apply to expenses which are includible in the gross income of the recipient of the entertainment, amusement, or recreation as compensation for services or as a prize or award under Code section 74. This provision will not apply if the taxpayer fails to include the amount in any information return (Form 1099) which is required to be filed with the Internal Revenue Service (or would be required except that the amount is less than $600).

6. Excise Tax Treatment for Wine and Flavorings Used in Distilled Spirits Products

Prior to January 1, 1980 (the effective date of the distilled spirits tax provisions of P.L. 96–39, the Trade Agreements Act of 1979), wine was generally subject to the applicable wine excise tax when it was withdrawn from the bonded wine cellar where it was produced. Where wine was used in the production of a distilled spirits product, the wine was taxed at the lower wine excise tax rate at generally the equivalent of 61 cents per proof gallon prior to blending with the distilled spirits. The distilled spirits component of a product was similarly taxed prior to blending at the distilled spirits tax rate ($10.50 per proof gallon). Also, a 30-cent-per-proof gallon rectification tax was imposed on the blended product. Similar treatment was accorded certain nonbeverage alcoholic flavorings used in distilled spirits products, under which these flavorings, through drawback rules, were subject to a net excise tax of $1 per proof gallon.

The 1979 Act modified the excise tax treatment of distilled spirits products so that the final distilled spirit product (including both wine and alcoholic flavorings components) is taxed on the alcohol (proof) content of the final product at the $10.50 per proof gallon distilled spirits tax rate. This method is known as the "all-in-bond" system.

This provision of the bill allows a credit against the excise tax liability under the all-in-bond method for the difference between the distilled spirits tax ($10.50 per proof gallon) and the applicable wine excise tax on the wine used in the distilled spirits product as if the wine had been subject to the wine tax (as generally imposed under Code sec. 5041 but for its removal to bonded premises). Also, this provision allows a credit for the distilled spirits tax on nonbeverage alcoholic flavorings of a type eligible for the reduced excise tax under prior law. The credit is to be available for domestically produced products and imported distilled spirits products containing wine and nonbeverage alcoholic flavorings, and would be effective on January 1, 1980.

B. SUMMARY OF H.R. 4155

(As passed by the Congress, December 13, 1980)

1. Simplification of Private Foundation Return and Reporting Requirements

This provision combines information reporting requirements for private foundations so that only one return would have to be filed to furnish information now required on two separate returns. It also provides that nonexempt wholly charitable trusts would be required to report the same information and be subject to the same disclosure requirements as exempt charitable organizations. Finally, it provides that disclosure of the name and address of an indigent or needy person receiving a grant of less than $1,000 in any year need not be made.

2. Nonqualified Deferred Compensation Plans for Nonresident Aliens

Under present law, special rules are provided for deductions of amounts under pension and other deferred compensation plans. Separate rules apply with respect to qualified and nonqualified deferred compensation plans.

The IRS has held that if a foreign branch's plan for the benefit of nonresident alien employees did not meet all of the requirements for qualification under the Code, no deduction would be allowable under the rules for qualified plans, but amounts would be deductible, if at all, only under the rules which apply to nonqualified plans. In addition, the IRS has held that no deduction is allowed in computing the earnings and profits of foreign subsidiaries for accrued pension liabilities until actual payments or contributions by the foreign subsidiary are made.

The bill provides that in the case of a nonqualified deferred compensation plan which is maintained for the benefit of persons substantially all of whom are nonresident aliens, the general rules regarding the timing and allowability of deductions for contributions will not apply if the taxpayer elects the special rules for deductibility provided by the bill.

Subject to limitations, the bill permits a deduction for amounts paid to a trust even though the trust did not meet all the requirements for qualification. Deductions would generally be limited to the lesser amount deductible under foreign law or the amount allowable under standards comparable to those applied in the case of plans in the United States (but eliminating certain limitations applicable to further U.S. social policy rather than U.S. tax policy). In the case of unfunded reserve plans, the deductible addition to the reserve would be the present discounted value of the vested liabilities of the foreign subsidiary or branch, using a discount rate intended to put employers electing to use unfunded reserve plans in a position equivalent to employers electing to use funded plans.

In general, the provisions apply with respect to employer contributions or accruals for taxable years beginning after December 31, 1979. An election is provided to apply the provisions retroactively with respect to distribution received from foreign subsidiaries in open years after 1971 (limited to distribution from post-1970 earnings and profits of a foreign subsidiary). In addition, post-1971 contributions to funded branch plans (not deductible under present law may, at the election of the taxpayer, be allowed over a 15-year period (beginning with the taxpayer's first taxable year beginning in 1980).

3. Transfers of Proven Oil and Gas Properties to a Controlled Corporation by Individuals

Under present law, independent producers and royalty owners are permitted to claim a deduction for percentage depletion with respect to a limited amount of oil or gas production. Generally, the otherwise allowable percentage depletion deduction is denied with respect to production from proven oil and gas properties which have been transferred after 1974. Such a transfer, however, generally does not preclude the deduction if the transferee and transferor must allocate one depletable quantity. Existing law contains no provision whereby an individual and his or her controlled corporation must allocate one depletable quantity in order to come within this exception.

This provision provides a limited exception to the generally applicable rules of present law which prohibit oil and gas production from being eligible for percentage depletion if the production is from a proven oil or gas property which has been transferred by an individual after December 31, 1974. Under this elective exception (which generally would not allow an increase in the aggregate amount of oil or gas production subject to percentage depletion), individuals would be allowed to transfer oil or gas properties to a controlled corporation without the loss of percentage depletion if several conditions are satisfied. Only oil or gas properties could be transferred to the corporation, and all of the corporation's outstanding stock (and no debt securities or similar obligations) would have to be issued directly to the individual transferors of the oil or gas properties solely in exchange for those properties. The corporation and the shareholders would be required to allocate one 1,000 barrel amount eligible for depletion subsequent to the transfer.

In the absence of satisfying these new rules or of an election under this provision, the rules of present law would continue to apply. Thus, production from a proven oil or gas property which has been transferred by an individual in an exchange to which section 351 applies would not be eligible for percentage depletion.

The provision applies to qualifying transfers made by individuals in taxable years ending after December 31, 1974, but only as to percentage depletion for production in periods after December 31, 1979. Therefore, the provision does not apply to oil or gas production in periods before January 1, 1980.

4. Tax Credits Allowable Against Alternative Minimum Tax

In general, this provision of the bill allows each nonrefundable tax credit to be used to offset the alternative minimum tax, except to the extent the tax is attributable to net capital gains and adjusted itemized deductions, if the credit is attributable to the active conduct of a trade or business by the taxpayer.

C. SUMMARY OF H.R. 4968

(As passed by the Congress, December 13, 1980)

1. Net Operating Loss Carryovers of Real Estate Investment Trusts

This provision permits certain trusts, which are former real estate investment trusts (REITS), an additional year to carry over operating losses for each year a carryback was not allowed because these entities were REITS in the carryback year. Under the provision, the maximum carryover period will be 8 years.

In addition, the provision removes the restriction that allows a net operating loss incurred before 1976 to be carried forward to the 6th, 7th, or 8th year only if the trust claiming the loss qualified as a REIT for all years from the loss year through the carryover year.

2. Rate of Interest on United States Retirement Bonds

Under present law, the interest rate on an individual retirement bond issued by the Treasury Department or a retirement plan bond issued by the Treasury Department remains the same from the date of issuance until the bond is redeemed (generally when the owner retires, becomes disabled, or dies).

This provision of the bill authorizes the Treasury Department to make upward adjustments in the interest rate on outstanding retirement bonds, so that these bonds would earn interest at a rate consistent with the yield for new issues of such bonds.

3. Technical Amendments Relating to General Stock Ownership Corporations

Under present law, a State is authorized to establish a general stock ownership corporation (GSOC) for the benefit of all its citizens. It is anticipated that the GSOC will be permitted to borrow money to invest in business enterprises. The cash flow from the operation of the business would be used to service and repay the loan, and the remaining cash would be distributed to the GSOC shareholders (i.e., all the citizens of the State). A corporation must meet certain statutory tests in order to be treated as a GSOC. Generally, a GSOC is exempt from Federal income taxation. The shareholders of the GSOC, however, report their proportionate part of the GSOC's taxable income on their Federal individual income tax returns.

This provision of the bill makes several technical changes in the tax law relating to GSOCs.

4. Tax Treatment of Employees of Charities Working Abroad

The Foreign Earned Income Act of 1978 generally replaced the prior $20,000 foreign earned income exclusion with a new system of itemized deductions for the excess costs of working overseas and an additional $5,000 deduction for employees working in hardship areas. As an exception to these new rules, the 1978 Act permits employees

who reside in camps in hardship areas to elect to claim a $20,000 earned income exclusion in lieu of the new excess living cost and hardship area deductions.

The provision allows individuals meeting the foreign residence or presence tests who perform "qualified charitable services" in less developed countries to elect, in lieu of the deduction for excess foreign living costs, an exclusion of $20,000 from gross income on the same basis as employees residing in camps in hardship areas. An employee of a private foundation is ineligible for the exclusion. The provision is effective for taxable years beginning after December 31, 1978.

5. Modification to Arbitrage Limitations of the Mortgage Subsidy Bond Tax Act

The bill also provides three modifications to the arbitrage limitations of the Mortgage Subsidy Bond Tax Act of 1980 which was included in the recently enacted Omnibus Reconciliation Act of 1980 (H.R. 7765; P.L. 96–499). Under the first modification, the issuer may elect to return net arbitrage earnings on all non-mortgage investments (other than certain arbitrage returned to the issuer as described below) to the United States rather than to the mortgagors. The election must be made before the bonds are issued. If the election is made, 90 percent of the aggregate amount of these arbitrage earnings must be paid to the United States at least once every 5 years. Any unreturned amounts must be paid to the United States within 30 days after the last bond is redeemed.

The second modification allows the Secretary of the Treasury to permit, by regulation or on a case-by-case basis, simplified accounting systems which meet the arbitrage limitations of the Mortgage Subsidy Bond Tax Act.

The third modification permits the payment of a limited amount of net arbitrage earnings on non-mortgage investments to the issuer. The amount that can be paid to the issuer is the amount computed on the yield determination date which results in the net effective interest on mortgages being less than one percentage point above the yield on the bonds. This fixed dollar amount may be paid to the issuer at any time, but is not adjusted for the time of payment.

D. SUMMARY OF H.R. 5391

(As passed by the Congress, December 13, 1980)

1. Second-Tier Excise Taxes

Under present law, a two-tier excise tax system is applicable to private foundations, employee benefit trusts, and black lung benefit trusts, with respect to prohibited acts of these organizations. The second-tier excise tax is not imposed if the prohibited act is corrected within a correction period. The Tax Court has held that it has no jurisdiction to redetermine a deficiency for a second-tier tax because the tax is not imposed until after its decision is final.

Under the bill, the second-tier excise tax will be imposed before any litigation begins (in order to insure that the Court will have jurisdiction) but is to be forgiven if the prohibited act is corrected within a correction period.

2. Alternative Minimum Tax on Charitable Lead Trusts Created by Corporations

Under present law, the alternative minimum tax may be imposed on a charitable lead trust set up by a corporation because the deduction for income paid to charity is treated as an adjusted itemized deduction preference. However, if the corporation had made a contribution to charity directly instead of through a charitable lead trust, there would be no alternative minimum tax because corporations are not subject to this tax.

This provision of the bill provides that the charitable deduction of a charitable lead trust will not be considered in determining the adjusted itemized deduction preference for purposes of the alternative minimum tax if the grantor of the trust, and the owner of all reversionary interests in the trust, is a corporation.

3. Adjustments in Excise Tax on Tires

Present law imposes an excise tax of 10 cents per pound on new highway tires (to be reduced to 5 cents per pound on October 1, 1984), and 5 cents per pound on new nonhighway tires. A credit or refund is allowed with respect to tires for which a warranty or guarantee adjustment is made. However, there are no specific statutory provisions as to the proper method of computing the credit or refund.

This provision of the bill will reduce the excise taxes on new tires by 2.5 percent, beginning on January 1, 1981, and disallow an excise tax credit or refund with respect to tires for which a warranty or guarantee adjustment is made after December 31, 1982. The bill also provides a special rule for determining a credit or refund for tires which are adjusted after March 31, 1978, and prior to January 1, 1983. In this period, a credit or refund will be determined under the administrative guidelines in effect on March 31, 1978.

4. Tax Treatment of Klamath Indian Judgments

Under present law, the income tax treatment of interest or damages for delay in payment for the Klamath Reservation is unclear.

The bill clarifies that interest or damages for delay in payment for the Klamath Reservation are excludible from the income of the Klamath trust and its distributees.

(As passed by the Congress, December 13, 1980)

1. Excise Tax Treatment of Domestic Wines for Certain Uses

This provision eliminates a distinction between the excise tax treatment of domestic and imported wines so that domestic wines, like imported wines, may be transferred to customs bonded warehouses without payment of tax. In addition, the provision will allow tax-free sales of wines from customs bonded warehouses to foreign embassies, international organizations, and related individuals for authorized purposes, as is allowed for distilled spirits under present law. These provisions will become effective for the first calendar month which begins more than 90 days after enactment.

2. Exempt Status of Auxiliaries of Certain Fraternal Beneficiary Societies

In order to qualify for tax-exempt status under Code section 501 (c) (7) after October 20, 1976, a social club cannot provide for discrimination against any person on the basis of race, color, or religion in the club's charter, bylaws, other governing instrument, or any written policy statement.

This provision allows social clubs which are affiliated with fraternal beneficiary societies exempt under Code section 501(c)(8), such as those operated by the Knights of Columbus, to retain their exemptions even though membership in the clubs is limited to members of a particular religion. In addition, this provision will allow certain alumni clubs which are limited to members of a particular religion in order to further the religion's teachings or principles to retain their exemption under Code section 501(c)(7).

3. Extension of Withholding to Payments of Sick Pay Made by Third Parties

Under present law, no tax is specifically required to be withheld upon payments of sick pay made to an employee by a person who is not the employer for whom the employee performs services. For example, no tax is withheld from payments of sick pay made on behalf of an employer by an insurance company under an accident or health policy.

In general, this provision of the bill provides for voluntary withholding from payments of sick pay made by a third party. In addition, it contains a special provision relating to sick pay paid pursuant to certain collective-bargaining agreements and contains various reporting requirements.

4. Tax Treatment Under the Rhode Island Indian Claims Settlement Act

Under present law, the tax status of land received by a corporation created under Rhode Island law to implement a settlement with the Narragansett Indian Tribe is unclear. In addition, present law is unclear with respect to various other aspects related to the Rhode Island Indian Claims Settlement Act.

The bill generally clarifies the tax treatment of transfers under the Rhode Island Indian Settlement Act.

F. SUMMARY OF H.R. 5973

(As passed by the Congress, December 13, 1980)

1. Waiver of Time Limits in Foreign Residence or Presence Requirement for Americans Working Abroad

This provision permits the waiver of the minimum time limits in the foreign residence or presence eligibility requirements for Americans working abroad to obtain the benefits of the deduction for excess foreign living costs or the exclusion for foreign earned income. The waiver generally would be available to Americans working abroad who could reasonably have been expected to meet those eligibility requirements, but who left the foreign country under conditions of war, civil unrest, or similar conditions which precluded the normal conduct of business.

2. Special Rule for Certain Distributions From Money Purchase Pension Plans

Under present law, if an employer maintains a tax-qualified defined benefit pension plan and a tax-qualified money purchase pension plan, and if an employee is covered by both plans, a total distribution of the balance of the employee's interest in the money purchase plan to the employee (or the employee's spouse on account of the employee's death) is not eligible to be rolled over tax free to an individual retirement account or to another qualified plan unless a total distribution is also made from the defined benefit plan in the same taxable year.

This provision will allow an employee (or a deceased employee's spouse) to make a tax-free rollover of a total distribution from a qualified money purchase plan where the employee is also covered by a qualified defined benefit plan maintained by the same employer even though a total distribution is not made from the defined benefit plan in the same taxable year. Generally, this provision will apply to payments made in taxable years beginning after December 31, 1978. In the case of such payments made before January 1, 1982, the period for making a rollover would not expire before December 31, 1981.

3. Treatment of Certain Repayments of Supplemental Unemployment Compensation Benefits

Under present law, if a worker who has been laid off is required to pay back supplemental unemployment compensation benefits because of the subsequent receipt of trade readjustment assistance, the worker may be entitled to tax relief in the year of repayment under a special tax computation for cases where the taxpayer restores a substantial amount held under a claim of right (Code sec. 1341). However, if the amount of supplemental unemployment compensation benefits required to be paid back by the worker is $3,000 or less, the worker may receive no tax relief for the repayment of previously taxed amounts unless itemized deductions are claimed.

This provision of the bill will allow a deduction from gross income for the repayment of supplemental unemployment compensation benefits if the repayment is required because of the receipt of trade readjustment assistance.

4. Tax Treatment of Expenses for Attending Foreign Conventions

Present law provides specific rules (Code sec. 274(h)) limiting the deduction for expenses of attending conventions, seminars, or similar meetings held outside the United States, its possessions, and the Trust Territory of the Pacific. These rules apply not only to the individuals attending the convention, but also to an employer who pays the expenses.

Under this provision of the bill, no deduction is to be allowed for expenses allocable to a convention, seminar, or similar meeting held outside the North American area unless, taking certain factors into account, it is "as reasonable" for the meeting to be held outside the North American area as within it. In addition, no deduction is to be allowed for expenses allowable to a meeting on a cruise ship. The two-convention rule of present law is repealed. Under the provision, a convention will not be treated as a foreign convention unless it is held outside the United States, its possessions, and the Trust Territory of the Pacific, and Canada and Mexico. The section also repeals the subsistence expense limitations, the coach fare limitations, and special reporting requirements of present law.

This provision is effective with respect to foreign conventions attended after December 31, 1980. If a foreign convention was scheduled prior to December 31, 1980, such convention is grandfathered under the terms of this provision (i.e., the old rules apply). A convention will be considered to be scheduled if a definite commitment has been made to hold the convention at a particular time and place. For example, the booking of hotel and travel accommodations would represent a definite commitment, while a mere internal memorandum would not.

5. Exception to Private Foundation Self-Dealing Rules for Continuation of Certain Leasing Arrangements

Present law generally prohibits certain "self-dealing" transactions, including leasing arrangements, between a private foundation and a "disqualified person." There is a 10-year transitional rule that permits continuation of an otherwise prohibited leasing arrangment pursuant to a binding contract in effect on October 9, 1969 (or pursuant to renewals of such contract), if the leasing arrangment is at least as favorable to the foundation as an arm's length transaction with an unrelated party, and if the arrangement was not a prohibited transaction at its inception.

The provision will allow a permanent exception from the self-dealing rules under Code section 4941 in certain circumstances where a private foundation leases office space from a disqualified person. A foundation will be eligible for this exception if (1) the lease is pursuant to a binding contract in effect on October 9, 1969 (or renewals thereof), (2) at the time of execution the lease was not a prohibited transaction, and (3) the space is leased to the foundation on a basis no less favorable than that on which such space would be made avail-

able in an arm's-length transaction. For the lease to qualify for this exception, the leased space must be in a building in which there are tenants who are not disqualified persons.

This provision applies to the Moody Foundation of Galveston, Texas, and any other private foundation leasing arrangement meeting the specific requirements of the bill. The provision is effective for taxable years beginning after December 31, 1979.

6. Special Rule Relating to Debt-Financed Income of Certain Tax-Exempt Organizations

Generally, under present law, passive investment income and gains from the sale of investments realized by an exempt organization are not subject to tax as unrelated business income. However, income and gains realized by an exempt organization from debt-financed property not used for its exempt function are subject to tax in the proportion in which the property is financed by acquisition indebtedness.

This provision permits a limited exception to the debt-financed income rules. This exception will allow certain sales of real property in 1976 to be made free of the unrelated business income tax if the property had been acquired prior to 1952 and the indebtedness was incurred before 1965. The intended beneficiary of the provision is the Tillamook County YMCA of Tillamook, Oregon.

G. SUMMARY OF H.R. 6975

(The Tax Treatment Extension Act of 1980—P.L. 96-541)

1. Employment Tax Status of Independent Contractors

Under present temporary legislation, taxpayers who had a reasonable basis for not treating workers as employees in prior years generally may continue to do so for periods ending before January 1, 1981, without incurring employment tax liabilities. The bill extends present law through June 30, 1982.

2. Extension of Provisions Relating to Historic Preservation

Under present law, taxpayers may amortize over a 60-month period the capital expenditures incurred in a certified rehabilitation of a certified historic structure. Alternatively, taxpayers may use accelerated depreciation methods to depreciate substantially rehabilitated historic structures. In general, taxpayers may not deduct the costs of, or any loss sustained in the demolition of, a certified historic structure or a structure located in a registered historic district. Present law also provides that accelerated depreciation methods may not be used with respect to real property constructed on a site that has been occupied by a certified historic structure (or by any structure in a registered historic district, except in limited circumstances) that has been demolished or substantially altered (other than by virtue of a certified rehabilitation). The bill extends these provisions through December 31, 1983.

3. 60-Month Amortization for Expenditures to Rehabilitate Low-Income Rental Housing

Under present law, certain expenditures made to rehabilitate low-income rental housing may, at the election of the taxpayer, be depreciated over a 60-month period. Rehabilitation expenditures made pursuant to a binding contract entered into before January 1, 1982, qualify for this special treatment. The bill extends this provision to any qualifying rehabilitation expenditures made through December 31, 1983 (including rehabilitations which had begun before that date and are still in process after that date).

4. Extension of Credit or Refund of Excise Tax on Fuels Used in Certain Taxicabs

Under present law, certain taxicab use of motor fuels is exempt (through refund or credit) from the 4-cents per gallon excise taxes on gasoline and other motor fuels. This exemption currently applies for calendar years 1979 and 1980. The bill extends the present fuels tax exemption for qualified taxicab services through December 31, 1982.

5. Exclusion for Certain Federal Scholarship Grants and National Research Service Awards

Code section 117 generally excludes from gross income amounts received as scholarships and fellowships grants. Such grants are not excludible, however, if they constitute compensation for past, present, or future services for the grantor. Under special temporary legislation, members of a uniformed service entering the Armed Forces Health Professions Scholarship program and similar programs before January 1, 1981, may exclude from their gross income the total amount of awards received under these programs. Additional special legislation provides tax-exempt treatment for National Research Service Awards made through 1980.

This bill replaces the special Armed Forces Health Professions Scholarship legislation with a rule of more general applicability. The rule provides that an amount, which is received by an individual as a grant under a Federal program and which would be excludible from gross income, but for the requirement that the recipient perform future services as a Federal employee, will be excludible if the individual establishes it was used for tuition and related expenses.

In addition, the bill extends the tax-exempt treatment of National Research Service Awards through 1981.

6. Deductions for Contributions for Conservation Purposes

This provision revises the provisions of current law allowing deductions for charitable contributions of easements and other partial interests in real estate contributed for conservation purposes. The provision expands the types of partial interests which qualify to include the entire interest of the donor in real property other than the rights to subsurface minerals. It also limits contributions eligible for the deduction to those contributed to a governmental unit, publicly supported charitable organization, or an entity controlled by one of these two kinds of organizations. Conservation purposes, as amended by this provisions, are defined as: (1) the preservation of land areas for outdoor recreation by, or the education of, the general public; (2) the protection of a relatively natural habitat of fish, wildlife, or plants, or of a similar ecosystem; (3) the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public or pursuant to a clearly delineated Federal, State or local governmental policy and will yield a significant public benefit; or (4) the preservation of a historically important land area or a certified historic structure. Finally, the bill makes these provisions permanent.

H. SUMMARY OF H.R. 7171

(As Passed by the Congress, December 13, 1980)

1. Tax Treatment of Annuities Purchased for Employees of the Uniformed Services University of the Health Sciences

Present law provides that, if an annuity is purchased for an employee by an exempt organization described in Code section 501(c)(3) or by a public school system, the employer's contributions for the annuity contract are excludible, within certain limitations, from the employee's gross income and are not subject to tax until the employee receives payments under the annuity contract.

This provision of the bill extends the same rule to qualifying annuities purchased for the civilian staff and faculty of the Uniformed Services University of the Health Sciences, which was established by the Congress under the Department of Defense to train medical students for the uniformed services.

2. Method of Depreciation for Railroad Track Assets

Under present law, the Internal Revenue Service allows the railroad industry to use the retirement-replacement-betterment (RRB) method of accounting for railroad track assets, which is the same method required for these assets by the Interstate Commerce Commission. Under the RRB method, when a new railroad line is laid, the costs (for rail, ties, ballast, fasteners, and labor) are capitalized, and these costs are not depreciated, but when replacements are made to an existing line, the replacement costs are deducted currently.

The RRB method is not codified as part of the Internal Revenue Code, but is recognized as an acceptable method in court decisions and Internal Revenue Service rulings. This provision of the bill codifies the RRB method, effective for taxable years ending after December 31, 1953.

3. Tax Treatment for Members of an Affiliated Group Which Included a Transferor Railroad in the ConRail Reorganization

Under present law, net operating losses of a member of an affiliated group of corporations controlled by a common parent corporation may be used to offset income reported by other members of the affiliated group where consolidated income tax returns are filed by the group. In order to reflect the reduction in tax liabilities derived by the other members of the affiliated group, the basis in the loss corporation's stock owned by other members of the group is reduced by these operating losses, and, where these losses exceed basis, a negative basis (called an excess loss account) is created. The excess loss account is restored to income when, for example, the loss corporation ceases to be a member of the affiliated group or the stock of the loss corporation becomes worthless.

The bill specifies that, for purposes of determining when an excess loss account is restored to income under the consolidated return rules, the determination of worthlessness of stock in a corporation which was

a transferor railroad in the April 1, 1976, ConRail reorganization will not occur until after a final determination of the value of the transferred rail properties by a special court formed for this purpose. This provision is intended to benefit the Norfolk and Western Railway Company.

In addition, the bill provides that, to the extent an excess loss account arising from net operating losses of a ConRail transferor railroad from periods before, or including, the taxable year of the ConRail reorganization is restored as ordinary income (or its equivalent in capital gain income), the transferor's net operating losses will correspondingly be restored to the transferor railroad to apply solely against any income ultimately recognized by the transferor railroad from the ConRail reorganization. This rule also will apply where the excess loss account would be recognized but for an election to reduce the basis of certain assets. This provision is intended to benefit the Erie Lackawanna Railway Company and the Lehigh Valley Railroad Company.

4. Prevention of Abuse of Certain Employee Benefit Requirements

Under present law, in some cases, individuals employed by certain separate but related entities are aggregated and treated as employed by a single employer for purposes of the rules relating to qualified pensions, profit sharing, and stock bonus plans. To eliminate certain abuses resulting under present law, this provision expands the aggregation rules with respect to the treatment of certain service organizations and related organizations for purposes of satisfying requirements for qualified pension, etc. plans, medical reimbursement plans, cafeteria plans, and simplified employee pensions.

Specifically, the provision requires that all employees of employers who are members of an affiliated service group be treated as employed by a single employer except as provided by Treasury regulations. An affiliated service group consists of a service organization (the "first organization") and (1) each other service organization which is related to the first organization, and (2) each other organization which is related to either (a) the first organization, or (b) a service organization which is related to the first organization.

Under the provision, a service organization is an organization the principal business of which is the performance of services. Also, the first organization and another service organization (an "other related service organization") are considered to be related if (1) the other service organization is a shareholder or partner in the first organization, and (2) the other service organization regularly performs services for the first organization or is regularly associated with the first organization in performing for third persons.

Under the provision, any other organization (an "other related organization") is related to the first organization (or to an other related service organization) if: first, a significant portion of the business of the other organization is the performance of services, for the first organization (or an other related service organization), of a type historically performed in the service field by employees, and second, at least 10 percent of the interests in the other organization is held by persons who are officers, highly compensated employees, or owners of the first organization (or an other related service organization).

I. SUMMARY OF H.R. 7956 [1]

(Miscellaneous Revenue Act of 1980—As passed by the Congress, December 13, 1980)

1. Treatment of Certain Community Income for Spouses Living Apart

Under present law, income considered community property under State law is taxed in equal shares to a husband and wife. Generally, under this provision, community property laws are to be disregarded for income tax purposes when the spouses have lived apart for the entire year and no portion of the income earned by one spouse has been transferred to the other spouse. The provision is intended to provide relief for abandoned spouses who are presently taxed on a portion of the income earned by the other spouse.

2. Amortization of Business Startup Costs

Under present law, costs incurred prior to the commencement of a business normally are nondeductible because they are not incurred in carrying on a trade or business. These startup or preopening costs must be capitalized and often cannot be depreciated or amortized because no ascertainable useful life can be established for these costs. However, the capitalized costs may be recovered for purposes of measuring gain or loss upon the disposition or cessation of the business.

Under this provision, qualifying business startup or investigatory expenses paid or incurred after July 29, 1980 may, at the election of the taxpayer, be amortized over a period of not less than 60 months.

3. Revision of Source Rules for Income from Certain Leased Aircraft, Vessels, and Spacecraft

This provision revises the rules for determining the source of income from the lease of certain vessels, aircraft, and spacecraft. The income or loss generally would be treated as from U.S. sources if the craft qualifies (or would qualify except for governmental use) for the investment tax credit, is leased to a U.S. person, and is U.S. manufactured. This rule will treat income as from U.S. sources in later periods even if the craft is then leased to a foreign person.

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[1] As originally passed by the House, the bill contained a provision allowing the investment tax credit for rehabilitated buildings which are leased to tax-exempt organizations or governmental units. The Senate Finance Committee amended the bill to delete this provision (126 Cong. Rec. S16517 (daily ed. December 15, 1980 (No. 178)). The House disagreed with the Senate amendment which would have deleted the provision (126 Con. Rec. H12500 (daily ed. December 15, 1980 (No. 178)). However, the provision was not included in the bill as amended by the House due to a clerical mistake. The Senate concurred in the House amendment (126 Cong. Rec. S16623 (daily ed. December 15, 1980 (No. 178)). As enrolled for signing by the President, the bill did not contain this provision due to the clerical error.

4. Tax Rates Applicable to Nonexempt Income of Homeowners Associations

Under present law, a qualified homeowners association is not taxed on its exempt function income. Other income, less certain deductions, is taxed at the highest corporate rate of 46 percent except for long-term capital gains, which are taxed at a rate of 28 percent. Under this provision of the bill, all income of a homeowners association (other than exempt function income in excess of $100) will be taxed at a rate of 30 percent.

5. Tax Treatment of Certain Income of Mutual or Cooperative Telephone and Electric Companies

This provision of the bill provides that, in determining whether a mutual or cooperative telephone company meets the 85-percent member-income requirement for tax exemption (under Code sec. 501(c)(12)), any income from rental of poles (used in the cooperative's exempt activities) or from display listings in a directory is to be disregarded. Also, in determining whether a mutual or cooperative company meets this 85-percent member-income requirement, any income from rental of poles (used in its exempt activities) is to be disregarded. This provision also provides that income from the rental of such poles by mutual or cooperative telephone and electric companies is not subject to the tax on unrelated business taxable income.

6. Refund of Taxes on Certain State Police Officer Subsistence Allowances

Under present law, cash meal allowances received by State police officers are includible in gross income. However, Public Law 95–427 provided that certain cash meal allowances received by State police officers during the period after 1969 and before 1977 are not includible in income to the extent the allowances *were not reported* by the officers.

The provision will allow a refund or credit of taxes paid by a State police officer with respect to cash meal allowances which *were reported* in gross income in returns filed by the officer for calendar years 1974, 1975, and 1976.

7. Clarification of Limitation on Deductibility of Certain Entertainment Facility Expenses Includible in Income of Recipient

Under this provision, the general rule for the disallowance of deductions for entertainment, amusement, or recreation expenses (Code sec. 274 (a)) does not apply to expenses which are includible in the gross income of the recipient of the entertainment, amusement, or recreation as compensation for services or as a prize or award under Code section 74. This provision will not apply if the taxpayer fails to include the amount in any information return (Form 1099) which is required to be filed with the Internal Revenue Service (or would be required except that the amount is less than $600).

8. Investment Tax Credit for Certain Property Used in Maritime Satellite Communications

Under present law, the investment credit is not generally available for property used outside the United States or for property used by an international organization. Under the Revenue Act of 1971, these

limitations were made inapplicable to interests of United States persons in communications satellites used by the International Telecommunications Satellite Organization (INTELSAT). This permitted the Communications Satellite Corporation (COMSAT), the governmentally designated United States participant in INTELSAT, to obtain the credit on its share of qualifying investments made by the INTELSAT joint venture.

This provision of the bill similarly makes the credit available for interests of United States persons in communications satellites used by the International Maritime Satellite Organization (INMARSAT), an international organization established to develop and operate a global maritime satellite telecommunications system.

9. Exemption From Unrelated Business Income Tax for Certain Real Estate Investments of Qualified Employees Trusts

Under present law, a qualified employee trust does not pay tax on its investment income, unless the income is from property that was debt-financed. Income from such property is termed unrelated business income in the proportion that the property is debt-financed and is taxed.

The bill provides that, with certain exceptions, debt incurred by a tax-exempt employee trust with respect to real estate investments will not be considered acquisition indebtedness (and, consequently, none of the income from such investments would be subject to the tax on unrelated business income because of acquisition indebtedness).

Debt does not qualify for this exception where it is incurred with respect to real property if—

(1) the purchase price is not a fixed amount determined as of the date of acquisition,

(2) the purchase price (or the amount or timing of any payment) is dependent, in whole or in part, upon the future revenues, income, or profits derived from the property,

(3) the property is leased to the transferor (or to a party related to the transferor),

(4) the property is acquired from, or leased to, certain persons who are disqualified persons with respect to the trust, or

(5) the debt is nonrecourse debt owed to the transferor (or a related party) which either

(a) is subordinate to any other indebtedness secured by the property, or

(b) bears a rate of interest significantly less than that which would apply if the financing had been obtained from a third party.

10. Prevention of Abuse of Certain Employee Benefit Requirements

Under present law, individuals employed by certain separate but related entities are aggregated and treated as employed by a single employer for purposes of the rules relating to qualified pension, profit-sharing, and stock bonus plans. To eliminate certain abuses resulting under present law, this provision expands the aggregation rules with respect to the treatment of certain service organizations and related organizations for purposes of satisfying requirements for qualified simplified employee plans.

Specifically, the provision requires that all employees of employers who are members of an affiliated service group be treated as employed by a single employer except as provided by Treasury regulations. An affiliated service group consists of a service organization (the "first organization") and (1) each other service organization which is related to the first organization, and (2) each other organization which is related to either (a) the first organization, or (b) a service organization which is related to the first organization.

Under the provision, a service organization is an organization the principal business of which is the performance of services. Also, the first organization and another service organization (an "other related service organization") are considered to be related if (1) the other service organization is a shareholder or partner in the first organization, and (2) the other service organization regularly performs services for the first organization or is regularly associated with the first organization in performing services for third persons.

Under the provision, any other organization (an "other related organization") is related to the first organization (or to an other related service organization) if: first, a significant portion of the business of the other organization is the performance of services, for the first organization (or an other related service organization), of a type historically performed in the service field by employees, and second, at least 10 percent of the interests in the other organization is held by persons who are officers, highly compensated employees, or owners of the first organization (or an other related service organization).

11. Provisions Relating to Employee Stock Ownership and Cafeteria Plans

a. Cash distribution option and put option for stock bonus plans

This provision will permit a tax-qualified stock bonus plan to distribute cash to a participant entitled to a distribution, subject to the participant's right to demand that benefits be distributed in the form of employer stock. If a stock bonus plan provides for cash distributions and if stock which is distributed is not readily tradeable on an established market, the participant must have the right to require the employer to repurchase the stock.

b. Special limitation for tax credit employee stock ownership plans and employee stock ownership plans

Under this provision, the increase in the dollar limitations on annual additions with respect to a participant in a tax credit employee stock ownership plan or an employee stock ownership plan (provided certain requirements are met with respect to allocations under the plan) will be the lesser of (1) the usual dollar limitation on annual additions to a participant's account, or (2) the amount of employer securities (or cash used to acquire such securities) contributed to the plan.

c. Valuation of employer securities in tax credit employee stock ownership plans

Under this provision, the value of employer securities listed on a national exchange contributed to a tax credit employee stock ownership plan will be the average of the closing prices of such securities for

the 20 consecutive trading days immediately preceding the date of contribution to the plan.

d. Participation of subsidiary corporation in a tax credit employee stock ownership plan

Under this provision, if a parent corporation owns 100 percent of a first-tier subsidiary and the first-tier subsidiary owns 50 percent of a second-tier subsidiary, the second-tier subsidiary is allowed to contribute employer securities of the parent corporation to its tax credit employee stock ownership plan. In addition, parent stock could be contributed by 80-percent owned lower-tier subsidiaries in this chain. This provision is effective for taxable years beginning after December 31, 1978.

e. Retirement savings by tax credit employee stock ownership plan participants

Under this provision, if employees are permitted to elect out of a tax credit employee stock ownership plan for the purpose of establishing IRAs, the tax credit employee stock ownership plan does not fail to meet the minimum coverage requirements of the Code if the plan benefits at least 50 percent of all employees (excluding employees who have not satisfied the minimum age and service requirements or who are otherwise permitted to be excluded), and if the total allocations under the tax credit employee stock ownership plan are equal to no more than two percent of the compensation of participating employees.

f. Cafeteria plans permitted to provide deferred compensation under rules applicable to cash or deferred profit-sharing and stock bonus plans

Under this provision, benefits under a cafeteria plan could include amounts which an employee covered by a profit-sharing or stock bonus plan with a qualified cash or deferred arrangement can elect to have the employer pay as a contribution to a trust under a profit-sharing or stock bonus plan. Amounts contributed by the employer, pursuant to the employee's election, will be treated as nontaxable benefits for purposes of the "cafeteria" plan rules.

12. Elimination of Withholding Tax on Pensions Paid to Certain Nonresident Aliens

Under present law, a nonresident alien is not subject to U.S. tax on compensation for services performed outside the United States. A nonresident alien is, however, generally subject to a tax of 30 percent on investment income (interest, dividends, etc.) from U.S. sources. If a nonresident alien receives a pension in the form of an annuity from a qualified trust or under a qualified annuity plan, it would generally be subject to the 30-percent withholding tax on the portion of the annuity attributable to U.S. source investment income earned on the contributions while they were held by the trust, unless a statutory or treaty exemption applies. Currently, there is a statutory exemption from tax on a pension paid to a nonresident alien for services performed outside the United States, if, at the time the annuity payments begin, 90 percent or more of the employees for whom contributions or benefits are provided by the plan are citizens or residents of

the United States. Also, a number of U.S. tax treaties provide reciprocally that pensions and annuities received by a resident of one country from sources in the other are taxable only by the country of residence.

The provision expands the statutory exemption from tax for pensions and annuities by making it available to an individual if (1) the recipient's country of residence grants a substantially equivalent exclusion to citizens and residents of the United States or (2) the recipient's country of residence is a "beneficiary developing country" under section 502 of the Trade Act of 1974. This provision applies to amounts received after July 1, 1979.

13. Extension of Time to Amend Governing Instruments of Charitable Split-Interest Trusts

The Tax Reform Act of 1969 imposed new requirements which must be satisfied by charitable lead and remainder trusts in order for an income, gift, or estate tax deduction to be allowed for the transfer of an income interest or a remainder interest to charity. However, certain exceptions were provided in the case of wills executed, or property transferred in trust, on or before October 9, 1969, in order to allow a reasonable period of time to take the new rules into account.

The provision extends for three years, until December 31, 1981, the time to amend, or commence judicial proceedings to amend, instruments of both charitable lead trusts or charitable remainder trusts which were executed before December 31, 1978, in order to conform such instruments to the 1969 Act requirements for a charitable deduction to be allowed for income, gift, or estate tax purposes.

14. Termination of Waiver of Exemption from Social Security Taxes Filed by the Manhattan Bowery Corporation

Under present law, services performed for a nonprofit religious, charitable, educational, or other organization exempt from income tax are not covered by social security unless the organization waives its exemption from social security coverage. In general, the provision terminates retroactively a waiver of exemption from social security coverage filed by the Manhattan Bowery Corporation of New York, New York. In addition, the corporation is to receive a one-time credit against its liability for social security taxes if, for certain past periods it has paid the employee's portion of social security taxes for certain employees or any interest or penalties on the employer's portion of social security taxes. However, this provision is not to be construed to give a double benefit, such as both a refund or credit, with respect to any amount of taxes, interest, or penalties.

15. Treatment of Certain Authors and Artists as Employees for Purposes of Certain Employee Benefit Provisions

Under present law, an employer may currently deduct (within limits) the expense of providing certain fringe benefits to employees even though the benefit is not included in the gross income of the employees. The bill provides that certain authors and artists are to be considered employees for purposes of these benefits under limited circumstances. This provision is intended to benefit the *New Yorker* magazine.

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